Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM 1994

Jack Lehtinen and
Carolyn L. Lehtinen

Petitioners,

vs.

Keith T. Harstad,

Respondent.

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PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF MINNESOTA

---

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## QUESTIONS PRESENTED

1. Do lower court's err, when they have taken away: (a) the time, (b) money, (c) land, (d) faith in the judicial system, when they refuse to identify, the authority, upon which they rely, to find title was marketable, upon entry of default judgment, with published service only, when the authorities below contend:

> Upon entry of judgment title **is not** marketable until, all rights to appeal, or reopen the case have expired,

to include: R. Patton & C. Patton Patton on Land Title (2d ed 1957) Sec. 591, 594; Minn. Stat. 559.02; Minn. Title Standard 84; Lord vs Hawkin 38 Minn. 73, 38 N.W. 689 (1881); 20 Dunnell Minn. Digest 2d Vendor Purchasor 4.01 (3rd ed. 1985); 10B Dunnell's Minn. Digest 2d Judgments Sec. 1706G (3rd ed 1984); Words and Phrases 26A Marketable Title; 77 Amjur 2d Vendor and Purchasor Sec. 169 & 187; 92 CJS Vendor and Purchasor 194C; 66 CJ Vendor and Purchasor Sec. 194; Watkins vs Shell Oil Co. 197 F 2d 42, 49, 50 (1950);

Nowlin vs Columbia School District 401 SW 2d 394 (1966) A MO case citing cases in COLO. ILL. ARK. TEX. KAN, FLA. and OR. On what authority do they rely?

2. Do the lower courts err when they essentially eliminate the right, to act Pro Se: a) By finding it an act of bad faith, to fail to hire an attorney, and vest a fellow attorney with title to 84.24 acres of land worth $1,347,800, upon a payment of $230,573.49, for 77 of those acres and every decision made is legally erroneous, contrary to the facts, and most are the result of prejudice and bias [**Read on, I prove it**]; b) Allow the Court of Appeals **clerks** to automatically **deny** every Pro Se the right to **oral argument**; c) When the Court of Appeals is faced with issues it cannot, in a published opinion, decide adverse to the Petitioner such as: (1) court orders are not available upon secret letter request, by return mail. (2) a bankrupt cannot be divested of land, without first lifting the

automatic stay. (3) Minn. Stat. 559.21 which mandates 90 day published notice, identifying the contractual interest being terminated, does not enable 20 day published notice of a summons to terminate Contract for Deed rights. (4) If you sign a purchase agreement it does not require, upon request, that you commenced judicial action to clear title. (5) When requested to identify the date a supersedeas bond is purchased, as it will decide the case, the court cannot refuse to do its duty.

Does the Court of Appeals, have the right, to ignore all state-wide issues raised and conclude Petitioners rights in an unpublished opinion, that, since it cannot be cited, does not fit the standard of state-wide impact, the Minnesota Supreme Court, limits itself to reviewing?

3. Do lower courts err when they fail to provide these Pro Se's a fair and impartial tribunal, to adjudicate these litigants rights, to a life and property, in

violation of the due process clause, when they relentlessly bullied them, proved they have no civil rights, and rewarded fraud upon the court by its officers when:

(1) A temporary injunction stopped the cancellation of a void option, for failure to pay the down payment, contrary to all law to include (a) the statute does not apply to options (1883), (b) failure to tender (1870), (c) title not marketable (1895), the agreement does not require that you attempt to clear title (1891). In reliance upon two fraudulent affidavits presented by attorney Steven Bruns.

(2) You do not obtain summary judgment, when the option agreement voids in 120 days if title is not marketable, and the buyer testifies he will accept Torrens Title only, and it will take a year to obtain.

(3) In a specific performance action the court finds you guilty, of an act of bad faith for not hiring an attorney, to clear title in 86 days; by Adverse Claims Action,

when the testimony reveals (a) the buyer will accept Torrens Title only, (b) service on Contract for Deed vendees will require 90 day notice, (c) upon entry of judgment **TITLE IS NOT MARKETABLE UNTIL THE YEAR, TO SET ASIDE A DEFAULT JUDGMENT HAS PASSED.** The agreement states:

> If title is not marketable and is not made so within 120 days from the date of written objections this agreement shall be void."

There was no tender, and this failure was excused by fraudulent affidavits. The court contended you must try to clear title, citing cases in which the agreement stated "title cannot be made good", and decided the void did not apply in reliance upon a case which states you must **preserve** title. The court found, it was a **contract**, because it **bound both parties**, and attacked Petitioner, stating in **his opinion** it was an option when in fact that has been the **court's opinion** for 108 years. The judgment enabled Respondent to purchase if he could make title marketable, in 120 days, by Adverse Claims Action,

and must purchase within 30 days of marketability.

(4) On March 26, 1992 it was impossible to perform as 112 days had passed and 21 day service by publication started. Respondent's attorney sent a secret personal letter to the judge, on March 27, 1992, with an order enclosed, that extended the time indefinitely, and was signed by the judge on March 29, 1992. The court relied upon the enclosed affidavit of Bruns which in 1993 he testified was false.

(5) A petition was sought, contending they have constitutional rights to due process, and a writ of prohibition is denied as "both parties agree the abstract was not available."

(6) In the Adverse Claims Action default judgment was entered on March 15, 1993 by a new judge. A motion to amend to delete a bankrupt served, without first lifting the automatic stay, and Contract for Deed vendees, entitled to 90 day notice, served 20 day

notice of a summons was denied from the bench on April 20, 1993.

A series of extrajudicial and void orders were issued, to include: (a) an order signed, upon letter request, that added Respondent as a plaintiff, and denied amendment on July 7, 1993, (b) Respondent requested the same relief granted, on July 8, 1993, and was granted the same relief, on September 17, 1993, and a $6,532.50 judgment, granted Respondent for the April 20, 1993 hearing. (c) Petitioner's moved the court to vacate the order, as 30 days had passed since July 7, 1993 and Respondent's rights were terminated, the court states; the title defects are irrelevant and it would be a fraud for a seller to refuse to sell.

(d) The December 1, 1993 judgment provides

> $6,532.50 shall be deducted...from the Contract for Deed...the closing shall occur within 30 days of this Order.

For the first time, a memorandum is attached, that attacks the Petitioners, who are facing a hearing, to vest title on December 14, 1993.

(7) A new judge vests title by modifying the void December 1, 1993 Order, not in default, by deciding the 30 days in which to purchase did not begin, on March 15, 1993 upon entry of judgment, but in fact on September 17, 1993, and a four-year Contract for Deed offer, plus a lie that he was prepared to pay, is equivalent to payment in full.

(8) The Court of Appeals concluded Petitioners had no standing as they suffered no injury in fact.

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## JURISDICTION

The jurisdiction of this court is invoked pursuant to 28 U.S. C. Sec 1257 (A), on the ground, that the State of Minnesota, acting through Respondent, deprived the Petitioner of property without the due process of law required by the Fourteenth Amendment to the United States Constitution.

The Petition for Writ of Certiorari is to request that this court review the decision on Federal questions the unpublished opinion of the Minnesota Court of Appeals dated November 7, 1994. The Minnesota Supreme Court denied further review on January 13, 1995. The Minnesota Supreme Court denied petition for further review dated January 31, 1995.

## CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV, United States Constitution, Section 1, Clause 2 "*** nor shall any State deprive any person of life *** property without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws."

## STATEMENT OF THE CASE

The purchase agreement here, bound the seller to provide, within a reasonable time, an abstract certified to date.

The purchaser was then bound to purchase, unless within 10 days of the receipt of the abstract, he makes written objections. This agreement provided:

> If said title is not marketable and is not made so within 120 days from the date of written objections...this agreement shall be void.

If written objections are made the agreement gives the purchaser the **option** to purchase within 120 days.

## FACT OF CASE

The Respondent on September 15, 1987 made written objections and refused to exercise his option within the 120 days. [A 4,6]

## CASE BASED UPON FRAUD UPON THE COURT

Respondent's attorney Steven Bruns, issued a supplemental title opinion on October 19, 1987 that advised:

> The only way to assure clear title would be...the completion of an Adverse Claims Action or a Torrens Registration proceeding... [A 4,5]

Bruns drafted a complaint which falsely stated:

> That defendants have made no attempt to clear title and have unequivocally stated to plaintiff that they will not make such title marketable...that defendants have thereby anticipatorily repudiated said agreement. [A. App. 17-19]

Respondent refused to pay the down payment and obtained a temporary injunction [A6] by presenting the court two affidavits drafted by Bruns stating:

> The defendants, prior to October 16, 1987, the date of closing, unequivocally stated to the plaintiff that they would not make such title marketable. [A. App. 20-25]

At the trial Bruns testified the affidavits were false. [T142-144]

Petitioners answer, cross claimed and added Steven Bruns and stated "this is a frivolous action...as..none of at least 30 necessary parties were named or served" and also sought a recovery under MS. 549.21 as there is no case law that supports their

position and they do not ask that the law be changed. [A. App. 26-29]

Respondent testified when deposed that he would purchase Torrens Title that would take a year to obtain. [R. App. 226-232]

The affidavit of Respondent's attorney stated:

> Lehtinen *** had the obligation to try to cure the title within the 120 days and to continue beyond the 120 days, by completing the curing of title through a Torrencing proceeding. [R. App. 588]

Petitioner moved the court for summary judgment as there was no fact issue before the court to determine the meaning of the agreement. Respondents made a motion to remove Bruns and his firm from the action. The court denied Lehtinen's motion and removed Bruns from the action. [1991 A. App. Exh. 11]

At the trial Petitioners were refused a jury despite the fact the complaint requested money damages and by refusing to tender would have been limited to money damages only.

The court's decision entered March 26,

1991 found it was an act of bad faith, for a person with no legal training, not to hire an attorney, on October 19, 1987 with 86 days available, and make title marketable by Adverse Claims Action. [A 5,7,13,16]

Petitioner testified:

Q. And at that time did he offer to Torrens the property at his expense?
A. Yes.
Q. And did you tell him that was not necessary.
A. I don't think I told him that. He left the meeting, I believe I told that to Mr. Price. Mr. Harstad told me what would be done and left the meeting. [T 27]
Q. Did you tell Mr. Price that you were going to proceed to Torrens it?
A. I said that if we could come to an agreement I would, yes. [T 28]
Q. And at the time of that particular meeting, when was that?
A. November 12, 1987. [T 30]
A. That document is not a contract, it is merely an option, a purchase agreement, and it would fall according to its own terms. I was willing to go beyond what that contract called for. It is a matter of law in 120 days that contract no longer existed. There is no way that title could be Torrensed in that time, so I agreed to go beyond that and take the year necessary to Torrens the property, provided they went ahead with the purchase agreement. [T 36]
A. At that meeting, they stated they would accept only a Torrens. [T 42]
A. Mr. Harstad told me it would take a year or more. [T 50]

Respondent rebutted nothing. [T 152-160]

IMPOSSIBLE TO CLEAR IN 86 DAYS

Lehtinen testified as follows:

> Q. After you discussed it with Mr. Bruns, after you received his, supplemental title opinion *** offered to get him some more documents *** whether there was any way that you could have satisfied him on or before January 13, 1988?
> A. I did not think that was possible, No.
> A. Well, I had experience with this particular property, we could not locate the various parties and it took 90 days to publish notice, so just the notice would have taken 90 days. [T 70]

Bruns testified:

> A. Depending on the court calendar, if you were able to serve by publication *** publish the necessary requirements, complete your service... [T 127]
> Q. If that started ticking at September 15, 1987, that would mean that if you were going to do a new cancellation proceeding that would have had to have been commenced on or before --
> A. October 15.
> Q. Well, October 13, 1987.
> A. I will have to take your word for it. I don't know how many days 90 days minus 120, what date that would be. [T 131-132]

The court relied upon the testimony of Bruns, that **he never spoke to Petitioner** concerning title [T 96]. He knew because he kept notes of every conversation [T 120] on

cross examination testified his notes were unreliable [T 121]. When deposed his partner testified "I recall you having lots of discussions with us" [R App. 273]. When asked if he would have been interested in the new documents Petitioner was obtaining, testified "they would be gladly accepted" "absolutely" [T 96], on cross examination admitted a barrel of documents would not have changed his mind [T 126].

Finding #5 relied upon Bruns when it stated "defendant received some documents from the bankruptcy court...but at no time presented any documents which would have transferred the remaining 91.4% [A 4]. Bruns testified that it was unusual to obtain only those documents [T 100]. The October 19, 1987 supplemental opinion stated "in addition to the bankruptcy documents we have been provided with copies of warranty deeds.. [A. App. 12] The other deeds were all given to him and copies have been in the court file since November of 1988 [T 187].

Bruns testified he relied upon Space Center v 451 Corporation as did the judge, and that case states you must "preserve title" [T 138,139]. Bruns testified concerning his fraudulent affidavits "I got the date wrong, ...it should be after the November 12th meeting" [T 142]. The courts finding #7 relies upon this statement [A 5].

Bruns testified the agreement was not void because a good-faith attempt was not made to secure marketable title [T 14] and the agreement was ambiguous [T 115].

Lehtinen testified he was not an attorney, real estate broker or agent, had no formal training in real estate courses or title opinions [T 39]. Bruns testified his principal practice involved real estate, his firm was an outside attorney for several title companies and he had done in excess of 10,000 title opinions [T 90,91]. Bruns testified:

> He (Petitioner) expressed his opinion that I was not qualified to render a title opinion and that he was much more experienced in these matters than I and knew better than I and would see to it that

justice was served. [T 113]

Respondent was given the option to purchase by judgment which stated:

> B. Plaintiff shall have 120 days from the date entry of Judgment to make title marketable and if not made so within 120 days the contract shall be void ***.
>
> E. The closing shall occur within 30 days after title is made marketable.

During the appeal period Bruns secretly began the clearing of title. [A. App. 97, 101]

On December 5, 1991 Bruns officially began to clear title. [A. App. on 101]

When deposed on December 1, 1993, to justify his attorney's fees, Bruns testified that there was no delay, and that **he worked without interruption from December 5, 1991 until notice of service was published starting 3/26/92.** [A. App. 112] From December 5, 1991 until March 26, 1992 is 112 days and adding on the 21 days for notice would total 133 days proving it **could not be done.**

On **March 27, 1992** Respondent's attorney sent a **secret personal letter** to the judge,

with an **order enclosed** which would indefinitely extend the time. [A. App. 141] The judge **signed** the order on **March 29, 1992** without notifying Petitioners. [A 17]

The letter contained the **fraudulent affidavit of Bruns** claiming he had been delayed because he did not have an abstract and an appeal had been made subsequent to December 5, 1991 and an answer had been interposed. [A. Reply Brief A 5-8]

The assignment of mortgage was unrecorded [A 21] and the answer could have been terminated as Bruns knew the mortgage was paid in full and a satisfaction could be recorded. [R App. 187, A 21]

The Adverse Claims Judgment, a different action before a new judge, was entered on March 15, 1993 finding Petitioners title free from the claims of name defendants by default. [A 19] Petitioners moved the court to **delete from judgment a bankrupt**, and mortgagees, entitled to Contract for Deed notice and **not validly served.** [R App. 450]

Attorney John Koneck responded on behalf of non party Respondent and informed the court:

> ISD was in bankruptcy at the time the action was commenced and was **served in violation of the automatic stay.** [Id. 468] **The complaint references the specific document number through which each mortgagee may have an interest in the property.** [Id. 470]
>
> **Only the summons was published.** [Id 594]

The motion was denied from the bench and the suggestion made Respondent seek attorneys fees. Koneck was to draft the Order and given 2 weeks to submit an affidavit. [Id. 732-734] By letter dated June 10, 1993 Koneck delivered the Order, denying amendment, and **adding Respondent as a plaintiff.** [Id. 527-528] Order signed without a hearing on July 8, 1993. [Id. 530] On July 22, Respondents moved the court for the same relief. [Id. 539] Memorandum in opposition dated August 16, 1993. [Id 541] Order dated September 17, 1993 grants relief requested and adds $6,532.50 in attorneys fees for the April 20, 1993 hearing. [Id.

607] On October 12, 1993 Petitioners request judgment be vacated and Respondent deleted, enclosing an affidavit which states:

> I decided to do nothing for 30 days after the entry of the Order on July 8, 1993 in order to allow Harstad to default by failing to purchase after title was obtained.
> I received a Notice of Motion dated July 22, 1993 in which Harstad requested the same relief granted by the July 7 order and in fact the proposed order was a copy of the order already signed on July 7, 1993.
> I made no counter motion, nor did I respond in the time permitted to make a counter motion, nor did I enclose a proposed order, as I did not want to disturb the default. The **judge** at the hearing **identified me as a non moving party** and granted me 20 minutes to speak and the moving party 30 minutes. [R. App. 634]
> I contacted John Koneck to represent me for the Motion for Amended Findings, etc. in April of 1993.
> **Koneck confirmed he knew his fee was to be paid by me**, by court order, but refused to make the motion in my behalf. [Id. 636]

At the hearing **the court stated:**

> If I were buying a property--**cloud on the title**, I as the buyer, **have the right to waive it--**. Otherwise--parties could perpetuate a **fraud, a seller could perpetuate a fraud.**
> To allow parties to legally, in real estate transactions, **to commit legal fraud.** [October 27, 1993 hearing transcript P 17, 18]

The December 1, 1993 Order directed Petitioners to sell to Respondent by Contract for Deed, with no terms identified, $6,532.50 be deducted and close within 30 days. [A 27]

The court's **first memorandum, attacked the Petitioners**, who were facing a hearing, to vest title, in the other case. [A 28]

Respondent's motion to vest title informed the court that (1) **Respondent's** August 25, 1993 **motion** was in fact a **motion by Petitioner** to amend the March 15, 1993 judgment and included Lehtinens response, **deleting the words "MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR AMENDED JUDGMENT"** and stating the order dated September 17, 1993 concerned title [R. App. 27]

> (2) "In case the **Lehtinens requested payment** in full, the Harstads obtained **advanced approval** from Land Title Inc. to accept a check from the Harstads...and to issue a check from Land Title Inc. to the Lehtinens." [Id. 29]

This was supported by the affidavit of of Rod Ives who confirmed these facts. [Id. 88] When deposed December 1, 1993 stated:

**Q. You didn't have any conversation at all with Mr. Harstad prior to the closing, is that correct?**
**A. That's correct.** (Id. 103]

He testified that at the closing he **only said "Hello** and how are you." [Id. 102] The court found the Respondent must purchase by paying in full in 30 days [A 34] and on October 18, 1993 offered a Contract for Deed. [R. App. 40-43] Judgment vested title December 14, 1993 by modifying "the Order of Judge Carolan of December 1, 1993" [A 30] and describes the actions of **Petitioners** as evidencing the "quintessential case of **'unclean hands'**." [A 35] The December 1, 1993 Order was not an unequivocal judgment with specific terms, and was not in default as it enabled a purchase until January 2, 1994.

The Court of Appeals found "Lehtinen's failure to appear at the closing empowered the court to vest title directly in Harstad". The record shows Mrs. Lehtinen appeared at the hearing at the stated time, obtained a

copy of the Contract for Deed offer, waited for Mrs. Harstad who did not appear, had another appointment and left. The burden is on the buyer to perform as a matter of law. Minn. Stat. 559.21 provides for purchasers to pay the amount due to the court administrator. If Harstad knew he must pay and had the funds available would be a jury question. The judgment stated "Lehtinens also challenge the marketability date...we conclude the **Lehtinens lack standing** to raise this issue ...the Lehtinens have not suffered an injury in fact...Respondents right to purchase was by judgment that stated "the closing shall occur within 30 days after title is made marketable." [A 8] The XIV Amendment to the Constitution permits you to protect your land. Of record the Petitioners received no interest, would have to pay $26,971.30 attorneys fees, all back taxes to include $10,642 for one year were not paid for 7.42 acres. [R. App. 38, 39] The judgment stated Harstad had the power to waive

the requirement that title be marketable. That is not a power, but a penalty the contract provides in the event a purchaser does not make objections in the time permitted. There was no right of waiver as the right was given by judgment which stated:

> "Plaintiff shall have 120 days from the date of entry of judgment to make title marketable and if not made so within 120 days the contract shall be void."

Respondent had the right to waive in 1987 and instead made written objections and refused to purchase. The court states "Lehtinens further argue the Harstads were not prepared to tender the full price." The record shows Mrs. Lehtinen was never offered payment in full. [R. App. 102]

> "The Harstads signed the Contract for Deed and then left. Harstad did not leave a personal check for the full amount of the balloon payment before leaving Land Title Inc. nor did Land Title Inc. ever contact the Lehtinens to tell them that the cash was available at closing. [A. App. 232]

The closer Rod Ives testified there was no preparation Supra.

The Lehtinens were paid $230,573.49 for

77 acres [R App. 390]. They were to be paid $3,500 per acre. [A. Reply Brief App. 9] The land they owned totalled 84.24 acres. [Id. 10, 11] They had an offer of $16,000 per acre. [Pet. for Rev. A6]

**SHOULD THE COURT GRANT A WRIT OF CERTIORARI?**

Petitioners at all times informed the lower court that their rights to juries unbiased opinions, limitation of jurisdiction, right to due process,given by the XIV Amendment were being violated. The court, terminated the right of a bankrupt, who was served in violation of the automatic stay, which is contrary to the decision of the court in Kalb vs Feurstein 308 U.S. 433 (1940) see also In Re Miller 10 Br 778, 780 (1981). The petition for writ of prohibition on October 1, 1992 [R. App. 22] was based upon Petitioner's rights to due process.

The decisions below are so outrageous that this court must exercise its supervisory powers.

When the lower courts have taken a profession known as the Practice of Law and turned it into the Practice of Lie, we, like Virginia, who needed reassurance, that there was a Santa Claus, need reassurance, that the actions below will not be validated, but you, as your title identifies, are Justices, honor bound, to act, in the best interest of all of the citizens.

The most despicable act, is that of the judge who deliberately tramples on a citizen's right to due process, as that act is not dignified by the threat of retribution or incarceration. When those bullies rub salt in your wounds, by concluding, "Lehtinens lack standing" and then state "determination of marketability **assisted Lehtinens** because it struck down the only impediment to the sale".

When the court stated on December 14, 1993 that "marketable title was achieved on September 17, 1993", it relied upon the false facts of John Koneck who informed them,

that, judgment was filed on March 15, 1993 and Petitioners made several motions attacking the validity of that motion including "REQUEST FOR JUDGMENT..." on August 16, 1993 that resulted in the September 17, 1993 judgment. The record shows Lehtinen's August 16, 1993 document stated MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR AMENDED JUDGMENT AND REQUEST FOR JUDGMENT CONFORMING TO FACT AND LAW.

Every judge should be aware that in accordance with Minn. R. Civ. App. P. 104.01 the right to appeal ended in 90 days on June 13, 1993, that orders, to amend or vacate, entered after 90 days, have no effect. In Re Slimmers Estate 146 Minn. 429 178 NW 954 (1920). The lower court has no jurisdiction to consider a motion to amend, made 15 days after entry of judgment, pursuant to Minn. R. Civ. P. 59.03. Differt vs Rendahl 306 N.W. 2d 813, 814 (Minn. 1981). Additionally, both the September 17, 1993 judgment and the December 1, 1993, were extrajudicial and

void. Sylvan Beach vs. Koch 140 F. 2d 852, 861 (1944).

The contention that a Contract for Deed offer, plus a lie, is the equivalent of an offer of payment in full, and seller must ask for the funds, is unsupportable. The court in Marriam vs Sandeen 267 N.W. 2d 714, 719 (1978) stated:

> Defendants--did not object to the tender of a personal check--made no effort to contact the plaintiff after dishonor of that check--he retendered a certified check upon hearing of the dishonor.
>
> It is further noted that the agreement lapsed of its own terms, that defendant had no duty to notify plaintiff.

Minn. Stat. 559.21 Subd. 4e states

> In the event--seller--cannot be found compliance--by paying to the court administrator--any money due.

If there were a question as to whether Respondent, knew he must pay, and had the funds to do so, would be a jury question.

The contention that marketability can be waived by Respondent (a) is not permitted by the judicial decree, (b) is contrary to law, as the agreement is automatically void, and

either party can invoke the lack of marketability Schwab vs Barremore 95 Min. 295 104 N.W. 10 (1905).

The contention that all contracts require you to clear title is contrary to the court's decision in Estro Bay Estates vs Geddens 14 F 2d 171 (1926) where the contract stated "shall be free and clear" and stated:

> There was no provision in the contract that in any way obligated the defendants to cure title in case there was a defect in title.

THIS CASE COULD HAVE SUBSTANTIAL IMPACT

Shortly after the petition for the writ of prohibition had been denied, three of the members of the Supreme Court were seeking reelection. They all informed me that, they did not review unpublished Court of Appeals decisions as they only considered cases having state-wide impact. I pointed out to the Chief Justice, that the Court of Appeals had just informed me, that the 30 day period to petition, began on the date of entry of judgment, supported this statement with a

case which states, it does not start until a copy of the Order has been served, by the successful party, upon the other party, and this has never happened. At that meeting, at William Mitchell College, every attorney, attempting to become a member of the court, stressed the necessity to supervise the Court of Appeals. The media has pointed out that the Court of Appeals makes secret "Order Opinions." The records for 1994 show that the Court of Appeals made 307 "Order Opinions" and 374 published Opinions.

When 942 cases were presented to the Minnesota Supreme Court they refused to review 629 and the remaining 313 included 108 Workmers' Compensation, 84 Civil, 11 Tax Cases, 21 Attorney Discipline, 35 Criminal, 14 Commitment and 13 Probate-Trust.

I am in contact with Carol Flynn, head of the Senate Judiciary Committee, in attempt to alter state law. The existing law does not require that unpublished opinions address all of the issues raised by the litigants, and

the authority upon which they rely to make their decisions. When you cover up the actions of the court below, (a) the media has no evidence, upon which they can rely, to remove from the bench incompetent judges, (b) there is no assurance, that the doctrine of stare decisis, means anything, (c) attorneys and courts are not informed, by published opinion, of new case law upon which they can rely.

**ARGUMENT**

The court could not vest title as petitioners did not disobey an unequivocal judgment to convey title on a specific date. Stotler and Co. vs Able 870 F 2d 1158, 1163 (7th Circuit 1989) Minn. R. Civ. P. 70. There are no legal arguments here, as all authorities agree with the information supplied by Petitioners.

This court must decide, if we are a nation of laws, and the cornerstone of our society, its judicial system, is made of granite.

If the rights, given by the XIV Amendment, which citizens have fought and died to protect, are in fact their birthright.

When carefully crafted decisions, which can sometimes be the equivalent of a work of art, are good for more than one day and one trip only.

In the alternative, shall the legacy of this court be, that on your watch, the cornerstone turned to sand and a once proud profession became the Practice of Lie, with the doctrine of stare decisis, a vague memory.

The Writ of Certiorari should be granted (a) to correct excesses of jurisdiction, Ex Parte Chetwood 17 SCt 385, 392 (1897), (b) The court persistently deprived Petitioner of the right to a jury Rogers vs The Missouri Pacific Railroad Co. 77 SCt. 443, 445, 446, (c) Petitioners XIV Amendment rights to life, due process and equal protection have been violated. (d) Contrary to this court's decision In re Miller 10 BR.

778, 780 (1981) the court below divested a bankrupt of his claim without valid notice. (e) Officers of the court have committed fraud upon the court. Kermit Medical Products, Inc. vs N.H. Investments Inc. 616 F 2d 833, 837 (5th Cir. 1980). (f) The decisions of the lower court are outrageous and this court must exercise its supervisory powers.

For these reasons your Petitioners respectfully request a Writ of Certiorari dated this __th day of April, 1995.

Respectfully submitted,


| | | |
|---|---|---|
| Jack Lehtinen | & | Carolyn Lehtinen |
| 2521 Lenna St<br>Las Vegas, NV 89102<br>(702) 876-3529<br>Attorney Pro Se | | 2521 Lenna St<br>Las Vegas, NV 89102<br>(702) 876-3529<br>Attorney Pro Se |

ORDER AND JUDGMENT
DAKOTA COUNTY DISTRICT COURT
FIRST JUDICIAL DISTRICT
STATE OF MINNESOTA

(Title) Court File No. C5 88-105868

- - - - - - - - - - - - - - - - - - - - - - - - - - - -

The above entitled matter came on for trial before the undersigned on January 15, 1991, at the Dakota County Government Center, Hastings, Minnesota.

Plaintiff, Keith T. Harstad, appeared personally and through his attorney John T. Finley; Defendant, Jack Lehtinen appeared personally and through his attorney David R. Ludwigson.

Based upon all records, files, and proceedings herein, and being fully advised of the premises, the Court makes the following:

FINDINGS OF FACT

1. That on August 26, 1987, Plaintiff and Defendant entered into a Purchase Agreement whereby Defendants would sell and Plaintiff would purchase approximately seventy-seven (77) acres of undeveloped real estate for the

total purchase price of $269,500.00; legal description as follows:

> 77 acres more or less T. 114 N.R. 21-20 W.N. Sec. 19 as per attached plat map. Exact Legal to Govern.
> (Hereafter referred to as "the property")

2. That the Purchase Agreement set forth the terms of payment including payment of $1,000.00 earnest money, which was paid by the Plaintiff; $29,550.00 cash to be paid on or before the closing date of October 16, 1987; and the balance of $242,550.00 to be paid pursuant to a Contract for Deed at an interest rate of 9% per annum, with $40,000.00 annual payments the first to be paid one year from the date of the closing, and on the annual anniversary date thereafter until September 15, 1991, at which time the entire balance would have been due and payable to the Defendant.

3. That contained in the Purchase Agreement signed by the parties was the following language:

> The seller shall, within a reasonable time after approval of this agree-

ment, furnish an abstract of title or a Registered Property abstract, certified to date to include proper searches covering bankruptcies. State and Federal judgments and liens, or, at seller's option, an owner's title policy in the full amount of the purchase price, the commitment for which shall be as of a current date. The buyer shall be allowed 10 days after receipt thereof for examination of said title and the making of any objections thereto, said objections to be in writing or deemed to be waived. If any objections are so made the seller shall be allowed 120 days to make such title marketable. Pending correction of title, the payments hereunder required shall be postponed, but upon correction of title and within 10 days after written notice, the buyer shall perform this agreement according to its terms.

If said title is not marketable and is not made so within 120 days from the date of written objections thereto as above provided, this agreement shall be void, and neither principal shall be liable for damages hereunder to the other principal. All money theretofore paid by the buyer shall be refunded. If the title to said property be found marketable or be so made at said time, and said buyer shall default in any of the agreements and continue in default for a period of 10 days, all the payments made upon this contract shall be retained by said seller and said agent, as their respective interests may appear, as liquidated damages, time being of the essence hereof. This provision shall not deprive any

party of the right of enforcing the specific performance of this contract provided such contract shall not be terminated as aforesaid, and provided action to enforce such specific performance shall be commenced within six months after such right of action shall arise.

4. That on September 15, 1987, Steven Bruns of Price and Associates, Ltd., at the request of the Plaintiff, issued a written title opinion concerning this real estate property which set forth 37 title exceptions including, an objection that the abstract revealed only an 8.6% interest in the property held by the Defendant.

5. That Defendant, after receipt of the title opinion, received some documents from the bankruptcy court and presented them to Plaintiff's attorneys but at no time presented any documents which would transfer the remaining 91.4% of the title into his name, nor did the Defendant present any documents which would cancel the interest of various mortgages.

6. That on October 19, 1987, a supple-

mental title opinion was issued by Mr. Bruns stating additional objections to the title as well as a statement that, "the only way to assure clear title to the property would be as a result of the completion of an Adverse Claims Action or Torrens Registration Proceeding, which should be completed prior to closing."

7. That on November 12, 1987, Plaintiff, Plaintiff's attorney and Defendant met regarding clearing the title. Following such meeting, Defendant stated he would take no further action to clear title to the property.

8. That Defendant was a dentist by training, he is now a real estate investor and speculator but has no legal training.

9. That Defendant did not retain an attorney to clear any title objections raised by Plaintiff's attorney.

10. That title is still subject to the same objections that existed on October 19, 1987 and no action has been taken to perfect title.

11. That on January 13, 1988. Plaintiff filed a Notice of Lis Pendens in the Dakota County Recorder's office along with the Summons and Complaint which was filed in the Dakota County District Court and served upon the Defendants.

12. That on February 2, 1988, Defendant filed and served a Notice of Cancellation claiming that Plaintiff Defaulted on the term of the Purchase Agreement requiring the down payment of $25,950.00.

13. That on February 24, 1988, this Court issued a Temporary Restraining Order prohibiting the cancellation of the Purchase Agreement or the filing by the Defendant of any documents which may act to extinguish the Plaintiff's interest in the property.

14. That on March 31, 1988, this Court issued a Temporary Injunction restraining the Defendant from cancelling the contract or filing other documents which may effect Plaintiff's interest in the property. The Court also required the Plaintiff to place a $30,000

cash bond with the court.

15. That Mr. Steven Bruns gave testimony at trial that the title to the property could be made marketable within a period of 120 days.

16. That title to the property could have been made marketable within 120 days.

Based upon all the evidence, the Court makes the following:

CONCLUSIONS OF LAW

1. The contract of the Plaintiff to buy and the Defendant to sell the property is valid and enforceable.

2. The Plaintiff is entitled to specific performance of the contract to buy the property from the Defendant.

3. The Judgment for Specific Performance shall include the following terms and the contract to sell and buy the property is reformed to conform to the following terms.

A) Plaintiff shall have the obligation to clear any title objections which prevent this property from

being marketable.

B) Plaintiff shall have 120 days from the date of entry of Judgment to make title marketable and if not made so within 120 days the contract shall be void and all earnest money paid shall be refunded.

C) All costs of making the title marketable shall be the responsibility of the Defendant and shall be deducted from the cash due at closing or from the Contract for Deed at Plaintiff's option.

D) The Defendant shall cooperate in clearing title. Any delay in clearing title caused by actions of the Defendant shall extend the 120 day period to make title marketable.

E) The closing shall occur within 30 days after title is made marketable.

F) No interest shall accrue to Defendant until the date of closing.

G) The date for the final balloon

payment on the Contract for Deed shall remain September 15, 1991, or 30 days after title is made marketable, whichever date is later.

4. No attorney fees are awarded to either party except as set forth above.

5. All other claims for relief are denied. Let judgment be entered accordingly after a stay of 30 days.

Dated: February 15, 1991

BY THE COURT:

/s/Thomas R. Lacy
Thomas R. Lacy
Judge of District Court

JUDGMENT

I hereby certify that the above Order constitutes the Judgment of the Court.

Date: March 26, 1991

Roger W. Sames,
Court Administrator

(Seal) By /s/ Betty Kulzer
Chief Deputy

MEMORANDUM

The question for the Court is to determine

the rights and duties of the parties who have entered into a purchase agreement for the sale of real estate.

The Plaintiff is seeking Specific Performan to enforce the agreement while Defendant argu that the agreement became void by operation of law upon the failure of a contract contingency clause and thus all rights and liabilities of the parties were suspended. Defendant has also counter-claimed against the Plaintiff for Slander of Title.

The language in the Purchase Agreement relevant to this dispute states that:

> If said title is not marketable and not made so within 120 days after the date of written objections thereto as above provided, this agreement shall be void, neither party shall be liable for damages hereunder to the other principal.

Defendant argues that this language puts no requirement on him to take steps to make title marketable. He also argues that that point is moot because the title could not have been made marketable in a period of 120 days. Thus, he had no duty to act to accomplish

something that was impossible.

The Court disagrees with the Defendant on both arguments. For Defendant to claim that he has no duty to act to perform under the terms of this Purchase Agreement is contrary to contract law in Minnesota. The law in Minnesota has long been that, "a contract must bind both parties. Neither party should be in a position where he can hold the other party to the contract and compel its performance if advantageous to him and at the same time be at liberty to avoid the contract at his part if disadvantageous. In other words, both parties should be bound, or neither should be." Schwab v. Baremore, 95 Minn. 295 104 N.W. 10 (1905), Raymond v. McKenzie, 220 Minn. 234, 19 N.W. 2nd 423 (1945).

In this case it is better that both parties be bound since it is that which they bargained for. To find any other way would be to interpret this purchase agreement as a unilateral contract; one where performance by the purchaser is required but performance by

the vendor may be avoided at his own election.

Defendant bases his argument, that he had no duty to act to try to make title marketable, on the Minnesota case law which appear to automatically void the contract between the parties if the contingency clause on marketability is not met. However, these cases all take into consideration a good-faith effort to perform on the part of the vendor. It is when some impossibility not attributable to either party, making the title unmarketable within the stated period of time [120 days], which automatically voids the purchase agreement. Space Center, Inc. v. 451 Corporation, 298 N.W. 2d 443 Minn. (1980), Nostdal v. Morehart, 132 Minn. 351, 157 N.W. 584 (1916), Joslyn v. Schwend, 85 Minn. 130, 88 N.W. 410. As well, in Mackey v. Ames, 31 Minn. 103, 16 N.W. 541, the Court interpreted the language stating that "if the title is not good and cannot be made good within 60 days, this agreement shall be void", to actually mean that within 60 days, if the seller "is not in

fact in a position to convey, or cause to be conveyed, good title to Plaintiffs", only then will the agreement be void. There can be no reliance on this provision if the seller is in position to convey marketable title but fails to act to do so. Mackey v. Ames at 541.

The Defendant further expressed his opinion towards this contract when he testified that the purchase agreement is simply an "option" to which either party may opt out of and does not become binding on the parties until the time of closing. This however, is an inaccurate statement of the law. A purchase agreement is a valid and binding contract between the parties who have signed thereto.

For the seller here to refuse to undertake any efforts to clear title amounted to bad faith. This purchase agreement, along with all other contracts, contains an implied duty on all parties to act in good faith in carrying out its terms and conditions. See Generally, 2 Restatement of Contracts 2d,

Section 205.

In considering title clearing voidance provisions, the Courts have always looked to the good-faith and fair dealings of the parties in upholding them. "[Time provision], standing alone, is clear and unequivocal. It is a provision in common use in land contracts and has often been construed by this court. It means that if the title which the vendor can convey to the purchaser is not good, and cannot in the exercise of good-faith on the part of the vendor be made good, then the agreement is to be at an end as to both parties and the purchase money paid is to be refunded. Nostdal v. Morehart, 132 Minn. 351, 157 N.W. 584 (1916). [Emphasis added].

When the Defendant refused to act according to the terms of the contract here, he failed to act in good faith and thus is prevented from benefiting from the voidance provision. If the Court were to find any other way, it would be concluding that the seller of real estate may be allowed to set up

his own voluntary default. This same issue has already been resolved in Space Center, Inc. v. 451 Corporation, 298 N.W. 2d 443 Minn. (1980). Here, the Court answered the question of whether a clause in the purchase agreement, that would render the agreement null and void if the seller does not remedy a title defect, operates to nullify automatically the contract. Here too, the Court's main focus is on whether the seller made good-faith efforts to conform to the contract. Since the Court found that the seller failed to use good faith in preserving the title in a condition so as it could be made marketable, the seller could not avoid performance of the contract through the general defects provision.

In addressing Defendant's second argument, the Court finds that there was sufficient evidence given at trial by Mr. Steven Bruns, Plaintiff's attorney, who issued the title opinion on this property, that, in fact, the title could have been made marketable in a period of 120 days through an

Adverse Claims Proceeding. At no time did the Defendant attempt to make an independent determination of the marketability of the title or independent determination of the marketability of the title or possible procedures necessary to be made so. He was aware at all times of Mr. Brun's Supplemental Title Opinion stating necessary procedures to be undertaken but chose to disregard those suggestions of possible procedures to clear the title.

Although Mr. Lehtinen did not himself create the defects in the title here, he did fail to act in good-faith in attempting to render the title marketable so as to be able to carry out the part of the contract which he bargained for. For this failure on his part, the Defendant is not allowed to rely in the nullification clause stated in the purchase agreement and Specific Performance is the proper remedy.

T.R.L.

ORDER
DAKOTA COUNTY DISTRICT COURT
FIRST JUDICIAL DISTRICT
STATE OF MINNESOTA

(Title) Court File No. C5 88-105868

Based upon all the files and records and proceedings herein, including but not limited to the Affidavit submitted by Steven Bruns dated the 12th day of March 1992.

IT IS HEREBY ORDERED:

1. That the Quiet Title action referred to in paragraph 3 of the Court Order of February 15, 1991 has been commenced in Dakota County and is known as Lehtinen v. Waller Signs et al, Court File Number CO-92-6525. The time to complete the action as referred to in paragraph 3B is hereby stayed until the interest of Evelyn M. Schultz or her assignee is fully determined by the Court in that matter.

2. The time period set forth in paragraph

3B of the Courts Order dated February 15, 1991 is further stayed for the period of time between when the Abstract was ordered on January 9, 1992 to the date that it is actually received by Mr. Steven Bruns from Land Title.

That the extensions granted herein are pursuant to the paragraph 3D of the Findings of Fact and Conclusions of Law which permits the Court to extend the 120 day period to make the title marketable in the event the Defendant does not fully cooperate in clearing the title.

Dated: March 31, 1992

Let Judgment be entered accordingly

/s/ Thomas R. Lacy
Thomas R. Lacy
Judge of District Court

ORDER AND JUDGMENT
DAKOTA COUNTY DISTRICT COURT
FIRST JUDICIAL DISTRICT
STATE OF MINNESOTA

(Title) Court File No. CO 92-6525

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The above matter came on for trial before the undersigned Robert F. Carolan, Judge of District Court on the 23rd day of February, 1993 at 9:00 a.m. at the Dakota County Courthouse, Hastings, Minnesota.

John M. Koneck of Fredrickson & Byron, P.A. and Steven H. Bruns of Price & Bruns, Ltd. appeared on behalf of Keith T. Harstad pursuant to the Order of the Honorable Thomas R. Lacy dated February 15, 1991, in Dakota County District Court File No. C5-88-105868, in the name of Plaintiffs. Lance W. Riley appeared on behalf of Defendant Craig Johnson.

Based upon all files, records and stipulation of counsel and proceedings herein, the Court hereby makes the following:

FINDINGS OF FACT

1. That this action was commenced pursu-

ant to the above-referenced Order of the Honorable Thomas R. Lacy dated February 15, 1991, in Dakota County Court File No. C5-88-105868 for declaratory relief in accordance with the provisions of Minnesota Statutes Chapter 555 and for a determination of adverse claims to real estate pursuant to Minnesota Statutes 559.01.

2. That by deeds filed in the office of the Dakota County Recorder as Document Numbers 696113, 696114, 696115, 696116, 696117, 696118 and 1013106, Plaintiffs obtained fee title to certain real property located in Dakota County, Minnesota legally described as follows: (Omitted)

3. That Plaintiffs are in possession of the Subject Property, which is maintained as undeveloped land.

4. That on March 11, 1992, B. Vaughn Burton served an Answer in the above-captioned matter purporting to be the assignee of the mortgagees interest of Defendant Evelyn M. Schultz. Said Assignment of Mortgage was

dated March 7, 1992, and subsequently recorded in the office of the Dakota County Recorder on February 17, 1993 as Document No. 1101872.

5. That on April 1, 1992, B. Vaughn Burton purportedly assigned his interest to Craig Johnson by Assignment of Mortgage subsequently recorded in the office of the Dakota County Recorder on February 17, 1993 as Document No. 1101873.

6. That at the pre-trial of this matter on February 23, 1993, counsel for Craig Johnson had his first opportunity to interview Evelyn M. Schultz regarding her mortgagee's interest and discovered that, in fact, the mortgage note had been paid in full and therefore the purported assignments were ineffective.

7. That counsel stipulated to the court that, in consideration for mutual releases between Craig Johnson and Keith Harstad, Craig Johnson would withdraw his pleadings and allow the matter to be heard as a default.

8. That no other appearances were made

on behalf of any of the Defendants, their heirs, successors or assigns.

9. That the allegations contained in the Complaint herein are true and correct, and are incorporated herein by reference.

10. That Defendants appear of record to claim an estate or interest in the Subject Property which is adverse to that of the Plaintiffs.

11. That Plaintiffs, and their predecessors in interest, have owned the Subject Property, and paid taxes thereon, in the fifteen years immediately preceding the commencement of this action.

12. That the Defendants herein have been duly served with a copy of the Summons and Complaint according to law. Said service was effected by personal service and by service of publication, and the Affidavits of Service and Affidavit of Publication are on file herein.

13. That the Subject Property is subject to a Purchase Agreement by and between the Plaintiffs, as sellers, and Keith T. Harstad,

as purchaser, dated August 26, 1987.

Based on the foregoing, the Court hereby makes the following:

CONCLUSIONS OF LAW

1. Plaintiffs are the fee owners of the following described real property in Dakota County, Minnesota, to-wit: (omitted)

2. Defendants are in default and Plaintiffs are entitled to the relief requested in the Complaint.

3. That the adverse claims of the Defendants, namely Waller Signs of Lincoln, Nebraska; Richfield Bank & Trust Co., as Trustee for Sara Howland, John Howland, A. Isabel Howland, Wendla Macheledt, Allan Bornhold, and Eddie's Refrigeration, now known as Pringles Refrigeration and Air Conditioning; Wayzata Bank & Trust Co., as Trustee for Donato Mezzen[illegible]; American Bank & Trust Company, as Trust[illegible] for Edwin Scherping; Robert Smith; Doro[illegible] Smith; Investment Sale[illegible] Diversified, Inc., f/k/a Developers' Sales, Inc.; Crystal Hurner; Wayzata Bank & Trust

Co., as Trustee for Charles Lane; Richfield Bank and Trust Co., Trustee for Francis Rubish and Catherine Rubish; Richfield Bank and Trust Co., Trustee for Gerald C. Magee; Macel A. Klemetson; Dorothy Vangrud; Debbie Vangrud; Walter Fehlauer; Elizabeth H. Bruce; Jane Phillips; Hugh L. Cullen; Fariss Cullen; Henry H. Schultz; Evelyn M. Schultz; Wilmar Schultz; Irene Schultz; American Bank & Trust Company; Richfield Bank & Trust Co.; Wayzata Bank & Trust Co.; Charles Lane; Edward Scherping; Allan Bornhold; Wendla Macheledt; Sara Howland; John Howland; Eddie's Refrigeration, now known as Pringles Refrigeration and Air Conditioning; The Mission Fund of the Lutheran Church - Missouri Synod; B. Vaughn Burton; Craig Johnson; also all heirs and devisees of any of the above named persons who are deceased and of all other persons having or claiming any right, title, estate, interest in or lien on the real estate described herein or any of them to any right, title, estate, interest in or lien on the said premises are

null and void, and none of the Defendants have any right, title, estate, interest in or lien upon said premises, or any part thereof.

4. That the Assignments of Mortgage filed on February 17, 1993, in the office of the Dakota County Recorder as Documents Nos. 1101872 and 1101873 are void and without effect.

5. That the Subject Property is subject to a Purchase Agreement by and between the Plaintiffs, as sellers, and Keith T. Harstad, as purchaser, dated August 26, 1987.

6. That judgment may be entered without the filing of an Affidavit of Military Status of the Defendants.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 12, 1993

/s/ Robert F. Carolan
Judge of District Court

JUDGMENT

I HEREBY CERTIFY THAT THE ABOVE ORDER CONSTITUTES THE JUDGMENT OF THE COURT.

DATE: MARCH 15, 1993

(SEAL) ROGER W. SAMES, COURT ADMINISTRATOR
BY /s/ Patricia Hyklebust
DEPUTY

ORDER AND AMENDED JUDGMENT
DAKOTA COUNTY DISTRICT COURT
FIRST JUDICIAL DISTRICT
STATE OF MINNESOTA

(Title) Court File No. C0 92-6525

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This matter came on for hearing before the undersigned Judge of District Court on the 27th day of October, 1993, at the Dakota County Judicial Center, Hastings, Minnesota.

John M. Koneck, Esq., appeared on behalf of Plaintiff Keith T. Harstad and pursuant to the Order of this court dated February 15, 1991, in Dakota County District Court File No. C5-88-105868, in the name of Plaintiffs Lehtinen; Susan Broin, Esq., appeared on behalf of Jack and Carolyn Lehtinen.

Based on the file, records, and proceedings herein, the Court makes the following:

ORDER

1. Paragraph 10 of the Findings of Fact of the ORDER dated September 17, 1993 is

hereby AMENDED to read as follows:

> 10. Fredrickson & Byron, P.A., attorney's for Keith T. Harstad, have incurred fees in the amount of $6,532.50 pursuant to Judge Lacy's order of February 15, 1991, District Court File No. C5-88-105868, wherein it was ordered that all costs incurred as a result of making title marketable shall be the responsibility of the Lehtinens.

2. Paragraph 1 of the Conclusions of Law of the ORDER dated September 17, 1993 is hereby AMENDED to read as follows:

> 1. The $6,532.50 in fees incurred by the attorneys for Keith T. Harstad, in bringing this action to quiet title in the name of the Lehtinens, are reasonable.

3. Paragraph 3 of the ORDER dated September 17, 1993 is hereby AMENDED to read as follows:

> 3. Reasonable attorney's fees in the amount of $6,532.50 shall be deducted from the cash due at the time of closing or from the Contract for Deed, at Keith T. Harstad's option.

4. The closing shall occur within 30 days of this ORDER. The Lehtinens shall cooperate in the closing.

5. All other provisions and findings of

the Order dated September 17, 1993 shall remain in full force and effect.

6. All motions not specifically GRANTED are hereby DENIED.

7. The attached memorandum is incorporated in and made part of this ORDER.

Dated this 1st day of December 1993.

BY THE COURT:

/s/ Robert F. Carolan
Robert F. Carolan
Judge of District Court

AMENDED JUDGMENT

I HEREBY CERTIFY THAT THE ABOVE ORDER MODIFIES THE PARTIAL JUDGMENT ENTERED SEPTEMBER 17, 1993 AND ALONG WITH THAT CONSTITUTES THE AMENDED PARTIAL JUDGMENT OF THE COURT.

DATE: DECEMBER 2, 1993

(SEAL)

ROGER W. SAMES
COURT ADMINISTRATOR

BY /s/ Sheila Gahler
DEPUTY CLERK

MEMORANDUM

While the general rule is that attorney's fees are not recoverable in the absence of a contract or statute, recovery of attorney's

fees are proper where an individual is forced into litigation as a result of the wrongful act of another. Lundeen v. Lappi, 361 N.W. 2d 913 (Minn. Ct. App. 1985) (dictum). Judge Lacy's order of February 15, 1991 directed that the Lehtinens be responsible for all costs incurred as a result of making title marketable. This action was commenced by Mr. Harstad and his attorneys due to the Lehtinen's failure to fulfill their obligation under the purchase agreement to make title marketable. The Lehtinens have repeatedly tried to delay and thwart all efforts at obtaining marketable title to this property.

The determination and award of attorney's fees, incurred as a result of Mr. Harstad having to obtain marketable title in the name of the Lehtinen's, is appropriate and reasonable.

R.F.C.

ORDER AND JUDGMENT
DAKOTA COUNTY DISTRICT COURT
FIRST JUDICIAL DISTRICT
STATE OF MINNESOTA

(Title) Court File No. C5 88-105868

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Whereas the above-entitled matter came on before the Honorable Richard G. Spicer on the 14th day of December, 1993 at the Dakota County Judicial Center, Hastings, Minnesota.

Whereas John M. Koneck, Esq., appeared on behalf of the Plaintiff; Susan Broin, Esq., appeared with Jack Lehtinen and on behalf of the Defendants.

Whereas the matter came before the Court on a notice of motion and motion by the Plaintiff to vest title.

Now, therefore, based upon the files, records and proceedings herein, the Court makes the following:

ORDER

1. That all terms and conditions of the Amended Order of Judge Carolan of December 1, 1993 shall remain in full force and effect,

except that transfer of title shall be as modified by this Order rather than the Order for closing.

2. That, upon the Plaintiff's deposit of the sum of $230,573.49 with the District Court Administrator, the district Court Administrator shall enter Judgment divesting Jack Lehtinen and Carol L. Lehtinen a/k/a Carolyn L. Lehtinen with title to the Property and vesting fee simple title to the Property in the name of Keith T. Harstad and Diane N. Harstad, as joint tenants. The real property is described as follows: (omitted)

3. That the County Recorder for Dakota County, Minnesota, is hereby ordered and directed to record a copy of such judgment, and the same shall have the effect of a conveyance executed in due form of law.

MEMORANDUM ATTACHED HERETO IS MADE A PART HEREOF:

Dated: December 14, 1993 BY THE COURT

/s/ Richard G. Spicer
RICHARD G. SPICER
JUDGE OF DISTRICT COURT

## MEMORANDUM

The Court was confronted with three main issues in this murky case: what is the date title became marketable; what does the Order of February 15, 1991 state concerning the manner of payment of full amount due and owing at the closing; and what is the logical conclusion as to divesting the Defendants of their title to the property?

Based on the Order of Judge Carolan, marketable title was achieved on September 17, 1993 thus rendering October 18, 1993 as a proper date for closing, it being within 30 days of marketability per the Order of February 15, 1991 and adhering to Minnesota Rule of Civil Procedure, Rule 6.01 which states:

> In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in

> which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

The parties, however, were not properly present at the closing thereby rendering that closing date ineffective. In that the closing never occurred as contemplated on October 18, 1993, the Defendants sold the property to a third party on November 11, 1993. This Court is astounded that this transaction was undertaken by the Defendants, especially in that a motion, filed by the Defendant pro se, was pending under the quiet title action Court File No. 92-6525. Indeed, there is a question as to the title even being marketable while there are motions pending.

The Defendants argue that Mr. Lehtinen did not appear at the closing due to the Plaintiffs not producing payment in full as ordered in the Court Order of February 15, 1991. The Plaintiffs retort encompasses a desire of mutual benefit by not paying the lump sum in cash, thereby allowing the Plain-

tiffs more time to come up with the money and the Defendants not being responsible for tax consequences. This Court finds, however, that the Order of February 15, 1991 is quite clear in stating that the Plaintiff must produce a lump sum under the contract. Therefore, the Court has ordered the Plaintiffs to deposit the sum of $230,573.49 with the District Court Administrator prior to Judgment divesting the Defendants of title.

This court has granted the Plaintiff's motion to divest the Defendants of title. Under Rule 70, Minn.R.Civ.P., the Court may enter an Order for judgment divesting the Lehtinens of the unencumbered title to the Property:

> If a Judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the Court may direct the act to be done at the cost of the disobedient party by some other person appointed by the Court, and the act when so done has like effect as if done by the party... If real or personal property is within the state, the Court, in lieu of direct-

> ing a conveyance thereof, may enter a judgment divesting the title of any party and vesting it in others; and such judgment has the effect of conveyance executed in due form of law.

This Court has the power to divest the Defendants of free and clear title to the property. Further, it appears to this Court that this remedy is necessary in that the Defendants have done everything in their power to delay this matter, thereby resulting in the quintessential case of "unclean hands." This matter needs to reach resolution. It is quite clear that the Plaintiffs wish to purchase this piece of property and that the Defendants do not wish to sell it to them. The history of this case shows that there have been opportunities for the parties to close on this property. As such, the Court will further this sale by requiring the Plaintiff to deposit the sum of $230,573.49 due and owing with the District Court Administrator and then divesting the Defendants of free and clear title to the property and vesting the same in

the name of the Plaintiffs as joint tenants.

It is this Court's advice that the parties complete this transaction and go about their lives.

R.G.S.

DAKOTA COUNTY
COURT OF APPEALS
STATE OF MINNESOTA

(Title) D.C. File No. C5 88-105868

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UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellants Jack and Carolyn Lehtinen (Lehtinens) challenge a judgment in a lengthy dispute over the sale of real property located in Dakota County. The judgment appealed from specifies that Lehtinens be divested of title to the property and the property be vested in the buyer, respondent Keith T. Harstad (Harstad).

We affirm.

DECISION

Lehtinens, who proceed pro se in this

appeal, attempt to raise numerous issues concerning matters resolved in two previous actions. The first was a successful action by Harstad for specific performance of the purchase agreement for sale of the property. The second was a successful quiet title action brought by Harstad on behalf of Lehtinens after Lehtinens failed to clear title to the property as required by the purchase agreement. The trial court in each action had ample opportunity to consider the merits of each case both at trial and during numerous posttrial motions. This court, by an unpublished opinion, affirmed the specific performance judgment. See Harstad v.Lehtinen, No. CO-91-723 (Minn.App.Nov.26,1991), pet. for rev. denied (Minn.Jan.27,1992). Any issues decided in either of these actions are now not appealable as they are either untimely or res judicata. See Minn. R. Civ. App. P. 104.01 (allows 90 days for appeals from judgments and 30 days for appeals from orders); Kaiser v. Northern States Power Co., 353 N.W. 2d 899,

902 (Minn. 1984) (a right distinctly put in issue and directly determined by a court cannot be disputed later by same parties); Scott-Peabody & Assoc. v. Northern Leasing Corp., 273 Minn. 236, 239, 140 N.W. 2d 614, 616 (1966) (judgment in a quiet title action is res judicata as to the parties and their privies).

As the trial court considered only three new issues in its January 5, 1994 judgment, we will consider only those issues on appeal. The issues concern the court's authority to divest Lehtinens of title to the property, the date title became marketable, and the proper manner of payment at closing. We will only reverse the trial court's determination of an equitable remedy for an abuse of discretion. Nadeau v. County of Ramsey, 277 N.W. 2d 520, 524 (Minn. 1979).

Lehtinens challenge the court's authority to grant Harstad's motion to divest them of title to the property. The 1991 judgment ordering specific performance required the

parties to close the sale within 30 days of marketability. Under the language of the 1991 judgment, as well as under Minn. R. Civ. P. 70, Lehtinens' failure to appear at closing empowered the court to vest title directly in Harstad. See Minn. R. Civ. P. 70 (allows court to divest party of property after party fails to convey land in accordance with prior judgment).

Lehtinens also challenge the marketability date established by the court. We conclude that Lehtinens lack standing to raise this issue. In order to have standing, the Lehtinens must have suffered an "injury in fact." Schmidt v. Apple Valley Health Care Ctr., Inc., 460 N.W. 2d 349, 354 (Minn. App. 1990), pet. for rev. denied (Minn. Oct. 25, 1990). Here, determination of marketability assisted Lehtinens because it struck down the only impediment to the sale. Furthermore, Harstad, whom the marketability requirement was designed to protect, had the power to waive the requirement. See Kehrer v. Seeman,

182 Minn. 596, 602, 235 N.W. 386, 389 (1931).

Lehtinens further argue that Harstad was not prepared to tender the full purchase price at closing as required by a February 15, 1991 order. The affidavit of Rod Ives, vice-president of the closing company used by the parties, states that on the date of closing his company was prepared to pay the full purchase price. His deposition testimony does not contradict this statement. This evidence supports the trial court's determination that the Lehtinens' failure to appear at closing was the reason the closing did not take place. See Minn. R. Civ. P. 52.01 (trial court's factual findings subject to clearly erroneous standard). AFFIRMED.

/s/

Dated: Nov 15, 1994

STATE OF MINNESOTA

IN SUPREME COURT

C4-94-707

Keith T. Harstad,

Respondent,

vs.

Jack Lehtinen and Carolyn L. Lehtinen,

Appellants.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Jack and Carolyn L. Lehtinen for further review be, and the same is, denied.

Dated: January 13, 1995

BY THE COURT:

/s/ A.M. Keith
Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

C4-94-707

Keith T. Harstad,

Respondent,

vs.

Jack Lehtinen and Carolyn L. Lehtinen,

Appellants.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that Jack Lehtinen and Carolyn L. Lehtinen's petition for further review, be, and the same is, denied.

Dated: January 31, 1995

BY THE COURT:

/s/ Esther M Tomljanovich
Associate Justice